

THE HISTORICAL & LEGAL BASIS
of
THE U.S. ARMY CHAPLAINCY

A Monograph
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The U. S. Army Chaplain School

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Career Course

by
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INTRODUCTION

Two interrelated topics are developed in this monograph. One concerns the history of the U. S. Army Chaplaincy. The other involves a discussion of its legality.

In several instances, both subjects converge to form a single line. In the paper an effort has been made to treat the two topics separately. The historical aspect is rather readily open to view and yields to analysis. The legal aspect, however, is more elusive.

The monograph will relate the historical narrative of the U. S. Army Chaplaincy in some detail. It will concern itself in greater detail with the legality of the Chaplaincy. To do so, references will be made to the First Amendment to the U. S. Constitution. In addition, several decisions of the Supreme Court will be incorporated from which can be inferred that these opinions offer direct and indirect affirmative support of the Chaplaincy.

The position maintained is that the Chaplaincy constitutes a significant portion of American military tradition, and that from its inception it was in every sense consonant with the mood, spirit, and intent of men and women who sought new life in a new land. By a careful study of the records, that mood, spirit, and intent never has been betrayed by that segment of America's military establishment called the Chaplaincy.

A significant question intrudes itself upon the examiner of records which pertain to Chaplains and the military establishment. It is this: if the chaplaincy was a natural outgrowth of the mood and spirit of theistic citizens, wherefore the periodic clamor directed against it? Wherefore indeed? Hopefully and charitably, it may be assumed to stem from an ignorance of Constitutional history. That ignorance may yield to enlightened study and conversation. Or, it may be the result of a misreading of the documents. That also yields to and encourages dialogue and further research. If, however, it is neither ignorance nor misreading that explains the periodic clamor, what does? Can it be a new mood, a variant and alien spirit animating citizens of that new land? If so, how does one discover that spirit and employ means to understand those pressures to which this sort of spirit yields?

CHAPTER I

The story of the U. S. Army Chaplaincy begins with the story of America's colonies. Long before the Revolution, most Provincial governments, especially those of New England, considered Chaplains a vital part of their defensive organization. Robert Hunt served as Chaplain at Jamestown during its first year of settlement. John Smith wrote of him as a "...courageous Divine; during whose life our factions were oft qualified, our wants and great extremities so comforted..."¹

The first selection by colonies of pastors to serve officially as military Chaplains occurred in 1637. The Magistrates of Connecticut in their first general court drafted 90 men from 3 villages. A 35 year old Samuel Stone who had been suspended from the Anglican Church in England and had come to America with Thomas Hooker served this group.² Massachusetts gave John Wilson land for his services as a Chaplain during the Indian War. In 1676, during Philip's War, Hope Atherton served with Captain Turner's force.

Massachusetts fought Quebec in 1690 with substantial aid from Chaplains. John Wise, John Emerson, Grindall Rawson, and John Hale served the expeditionary force. Chaplain Wise took command when a General lost his courage. The Legislature, 46 years later, voted 300 acres of unappropriated land to his

1. R. J. Honeywell, Chaplains of The U. S. Army, (Office of the Chief of Chaplains, Department of the Army), 1958, p. 10.

2. Ibid, p. 11.

family.³

Connecticut sent Timothy Edwards as one of the chaplains of a force sent to Canada. King William directed Governor Sloughter to appoint a chaplain and pay him 6 shillings 8 pence per day. Daniel Dwight received an appointment as Chaplain to Fort Dummer, Vermont after its Commanding Officer wrote, "We shall lead a heathenist life unless a Chaplain be allowed." Ten Chaplains served in King George's War. Thirty-one men are known to have served Colonial Troops between 1755-1763, and 179 were involved in the Revolutionary War.

During this era prior to the Revolution, George Washington at age 24 wrote the authorities in Virginia, "Common decency, Sir, in a camp calls for the services of a divine, and which ought not to be dispensed with, although the world should be so uncharitable as to think us void of religion incapable of good instructions."⁴

The armed forces of the colonies were "adopted" by the new-formed Continental Congress, and on 29 July 1775, Congress allowed Chaplains with pay of \$20 per month.⁵ In August of that year, Washington reported 15 Chaplains on duty with 23 Regiments. Something of the intent of the Chaplaincy can be

3. Ibid, p. 12.

4. Ibid, p. 24.

5. Ibid, p. 36.

felt in Daniel Roberdeau's letter to Washington.

This new and honorable Establishment (the Chaplaincy) is designed to suppress the horrid sins of Cursing, swearing, and other vices...to strengthen the hands of Officers by public and private exhortations to obedience of General and Regimental Orders; to discourage Desertions....; to encourage Enlistments; to recommend cleenlyness as a virtue conducive ⁶ to health, and to reprehend the neglect of it.

Records show that John Hurt and David Jones were appointed to the Regular Army under the Constitution in 1791. These men went everywhere with their men. They comforted them in the snows of Quebec and in the Forests of Kentucky. They were present when the line wavered at Savannah, saw the charge at Bennington, crossed the Delaware with Washington, and stood beside him at Yorktown. In so doing, these Chaplains establish-⁷ ed a group of precedents which never have been lost.

The legal story continues in this Revolutionary and Post-Revolutionary period with a law of 1792 which placed the Chaplain in the General Staff without changing his pay status. A law of 1816 authorized one Chaplain to each Brigade with pay and emoluments of a major. In 1831 Secretary of War Lewis Cass recommended appointment of Chaplains at Army Posts for the good of the service. Early in 1838 the Senate passed the bill

6. Ibid, p. 38.

7. Ibid, p. 73.

and tied on duties as schoolmaster.⁸ As a result of this bill, Chaplains served at Posts in Virginia, New York, Maine, Michigan, Wisconsin, Minnesota, Iowa, Kansas, Arkansas, and Louisiana.

After the Mexican War, a law of 2 March 1849 increased the number of authorized Chaplains from 20 to 30.

The Civil War period found Chaplains present and involved on both sides of the fight. Approximately 2300 men served the Union while the number ministering to the Confederacy was 400. The Union lost 66 Chaplains while the Confederates lost 25 in the conflict. Both Lincoln and Lee issued orders that times of worship would be set for men who were defending their notions of right.

The intent of the Chaplaincy is seen again in a letter written during this era. Senator Clark of New Hampshire wrote,

"I think the Chaplain is the most effective man in the regiment... In my judgment, you had better not take away from the regiment the man to whom the soldier goes in his time of suffering or when he needs advice." 9

By the Act of 28 July 1866, the President was empowered by the Senate to name Chaplains for each of 4 regiments of Negro troops. Except for this provision, the Chaplaincy reverted back to the 30 Post Chaplains authorized in 1849.¹⁰ Acts of 2 March

8. Ibid, p. 79.

9. Ibid, p. 140.

10. Ibid, p. 152.

1867, 28 June 1898, 2 March 1899, 12 May 1917, 25 May 1918, and 6 October 1917 authorized Chaplains.

At the outbreak of World War I, 146 Chaplains were on active duty. That number swelled to 2217. Twenty-seven received wounds, 28 received medals, and 57 were decorated with medals of honor from foreign nations. Twenty-three died. They represented 8 churches, 12 states, and 2 foreign countries. ¹¹

A bill of 4 June 1920 provided a Chief of Chaplains. Between September 1939 and September 1945, 9117 Chaplains served American soldiers. Of that number, 8896 served during periods of war. ¹² Two hundred and four were casualties, 51 were killed, 76 wounded, 54 captured, and 1783 received 2453 decorations. ¹³

In Korea, 1620 Chaplains served. Thirteen died, and 567 received 683 decorations.

At this writing, more than 1300 Chaplains are on active duty with the U. S. Army. They serve men stationed at points all over the globe. Their ministry is the same as it was in the Pre-Revolutionary era--to meet the religious needs of American soldiers. Something of the vast scope of their work is suggested in the combined statistics for a six-year period beginning with July 1941: 6½ million services of worship with 1/3 billion persons in attendance, 50 million visited in hospitals, 5 million

11. Ibid, p. 196.

12. Ibid, p. 217.

13. Ibid, p. 294

visited in guardhouses, 1/3 billion given pastoral ministrations, and a total of 7 billion receiving some form of religious service.¹⁴

From this brief accounting, it may be seen that Chaplains meeting the religious and spiritual needs of Americans defending American causes by force of arms constitute a long and noble tradition. They are as much a part of America's history as noble precepts, drums, fife, bunting, and the uniform. It is fitting that a nation under God should have men specifically representing His claims as an integral part of its militia.

14. Ibid, p. 337.

CHAPTER II

The legal basis of the Chaplaincy has been traced in Chapter One only in broad outlines. Acts of Congress and Presidential authorizations were listed. The legality of the Chaplaincy also involves a discussion of its relationship to the First Ammendment, Supreme Court decisions affecting Church-state relationships, and the religious mood and thought of colonial America. Consideration is given now to these.

"Congress shall make no law respecting the establishment of religion or prohibiting the free exercise thereof," states the First Ammendment. On 29 July 1775, the Continental Congress set pay scales for Chaplains at \$20 per month. Since that date the Chaplaincy has existed as a legal part of American military forces. A specific example is the authority given under the Constitution on 3 March 1791 (Section 5, Chapter XXVIII, I Statute 222.) Title 10 of the U. S. Code, Section 3073 states, "There are Chaplains in the Army." Section 3531 reads, "A Chaplain has rank without command." Section 3547 says, "Each Chaplain shall, when practical, hold appropriate religious services at least once on each Sunday...and shall perform burial services..." Section 3293 states, "No person in civil life may be appointed as a Chaplain in the Regular Army unless he has passed an examination prescribed by the President as to his moral, mental, and physical qualifications." Section 3064 names the Chaplaincy as a Special Branch. Section 3036 states that

the, "Chief of Chaplains shall be appointed by the President by and with the consent of the Senate."

There exists a formidable array of witnesses affirming friendly views toward the Chaplaincy. Messers Justices Goldberg and Harlan state, "...it is clear from the opinions in past cases that the Court would recognize the propriety of providing military chaplains."¹ In 1912 Secretary of the Interior, Walter L. Fisher, in a ruling supported by President Taft, observed that the Constitution did forbid the establishment of a state church and the union of church and state; however, that prohibition was not violated by appropriations for religion since Congress supports Chaplains in the Army and Navy. Senator Badger in January of 1853 supported Chaplains in service, and pointed out that it did not violate the First Amendment. In a report of the Committee on the Judiciary of the House of Representatives in 1854 mention was made of a need from people to rid themselves of the imputation that religion is not needed for the safety of civil society. It further declared that religion is the foundation on which the whole structure rests. Justice Hughes, in his dissenting opinion in the U. S. v Macintosh (1931) case, spoke praise for the "many who have given service to America in wars. We have but to consider the defense given to our country in the late war, both in industry

1. Engel v Vitale, 370, U. S. 421, (1962).

and in the field, by workers of all sorts, by engineers, nurses, doctors, and chaplains..."

Tracing this favorable sentiment to its origin, one finds a thoroughly religiously oriented society. At the time of the Constitutional Convention at Philadelphia in 1787, Rhode Island, Pennsylvania, and Delaware had never had an established Church. New York, New Jersey, Virginia, North Carolina, and Georgia had discarded their state church, while Massachusetts, Connecticut, and New Hampshire retained their Congregationalism. Maryland and South Carolina had their Church of England establishment. Hence, a two-thirds majority of the colonies had no establishment. The minority were divided into two groups.² Each of these states was willing to concede no favor by the federal government to any denomination except its own. The meaning of the First Amendment is to be understood within this sort of context.

More of this context is set by Justice Brewer in his opinion concerning *The Church of The Holy Trinity v U. S.* (1892).

This is a religious nation. This is historically true. From the discovery of this continent to the present, there is a single voice making this affirmation.

He refers to Columbus' mission from Ferdinand and Isabella and its words, "...it is hoped that by God's help some of the continents and islands in the oceans will be discovered." The first

2. Carl Zollman, American Church Law, (St. Paul, Minn., West Publishing Company), 1933, p. 4.

colonial grant made to Sir Walter Raleigh in 1584 authorized him to enact statutes in keeping with the "true Christian faith nowe professed in the Church of England." Virginia's charter, granted by King James in 1606, contained the hope and intent of "propagating the Christian religion..." The Compact made by the Pilgrims in the Mayflower in 1620 speaks of a voyage undertaken for the "Glory of God and the advancement of the Christian faith..." The fundamental orders of Connecticut (1638-1639) commence, "Forasmuch as it hath pleased the Almighty God by the wise disposition of his divine providence to order..." In the charter of privileges granted by William Penn to the province of Pennsylvania in 1701 there is the affirmation that, "Almighty God is the Lord of conscience..." The Declaration of Independence acknowledges the presence of the Divine in human affairs in affirming men to have been "created... endowed by their Creator." Further, "every Constitution of every one of the 44 states contain language which either directly or indirectly recognizes a profound reverence for religion and an assumption that its influence in all human affairs is essential to the well-being of the community."³ These are not individual sayings or declarations of private persons; they are organic utterances; they speak the voice of the entire people.⁴

3. Joseph Tussman, The Supreme Court on Church and State, (Oxford University Press, N. Y.), 1962, p. 38.

4. Ibid, p. 40.

Looking at the mind and mood out of which the First Amendment grew, its purpose is, according to Zollman, "patently clear."⁵ Its object is to prevent any national ecclesiastical establishment which would give to any heirarchy the exclusive patronage of the national government. Writing further on this Zollman says:

We are not a nation without religion, but we are a nation free from ecclesiastical despotism. We are not a nation without churches, but we are a nation of free churches. We are not a nation whose Christianity is filtered through an intolerant ecclesiastical establishment, but we are a nation whose Christianity flows freely from the heart of a great and a free people. 6

He confidently affirms that, "no principle of Constitutional law is violated when...Chaplains are designated for the Army and Navy."⁷

What was the intent of that First Amendment? Madison said he apprehended the meaning of the words on religion to be that Congress should not establish a religion and enforce the legal observation of it by law, nor compel men to worship God in any manner contrary to their conscience. "Its essence," said Justice Frankfurter, "is this: no religion shall either receive the state's support or incur its hostility."⁸ Justice

5. Carl Zollman, op. cit., p. 8.

6. Ibid, p. 27.

7. Ibid, p. 33.

8. Joseph Tussman, op. cit., p. 158.

Douglas wrote,

The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. The Amendment has a dual aspect. It forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship, and safeguards the free exercise of the chosen form of religion. 9

To leave the question unanswered no longer, the intent of the First Amendment was primarily negative. No one wished to endow a particular church or denomination with power, privilege, and support. To erect a single church as the authorized one was precisely what that Amendment forbade. Even more pointedly, the colonists wished to avoid what had existed in their native countries in Europe.

The relevance of this to the Army Chaplaincy must be abundantly clear. In no way is it an effort to set up a particular church or denomination. Not even the tendency toward erection of a single church through the Chaplaincy can be discerned in the Chaplaincy. The history of the Chaplaincy yields no shred of evidence that it ever tended in that direction. In the First Amendment, every stricture was created against aid to a particular church. The Chaplaincy at no time ever has represented a single, particular denomination.

The state takes men and sends them to all parts of the world. In so doing, it has the moral obligation to provide their food, lodging, facilities for recreation, and medical care. To see

9. Ibid, p. 186.

that these men retain their right to worship freely is also a state obligation. Thus, the First Amendment becomes a reason for the state's involvement with religion as it acts positively to see that no person's free exercise of religion is denied.¹⁰

10. John S. Snyder, Church-State Relationships In the Military Chaplaincy, Monograph Submitted for "Political Ethics and Decisions" at Princeton Theological Seminary, Unpublished, 1964.

CHAPTER III

To this point, consideration has been given to establishing the meaning of the First Amendment and its application to the legality of the Chaplaincy. The story cannot end, however, until something is shown of subsequent attitudes and interpretations of that phrase. Historically, such terms as "separation of church and state," "neutrality of state toward religion," "walls," etc., came into use. It cannot be emphasized too forcefully that these terms are nowhere present in the Constitution or other primary documents of our government. These and kindred expressions derive from individuals and a body of legal opinion which postdate the documents formed by those colonists in 1776. One is hard pressed to determine how these views harmonize with the mood and intent of the First Amendment.

Jefferson took the first step beyond what was stated in that Amendment when he wrote

I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should make no law respecting an establishment of religion, or prohibiting the free exercise thereof, thus building a wall of separation between church and state.

With some feeling, one suspects, Zollman stated candidly, "It is respectfully submitted that Jefferson has entirely misunderstood the scope of the First Amendment."¹ Whether or not Jeff-

1. Carl Zollman, *op. cit.*, p. 27.

erson understood its scope can be debated. What is beyond debate is that Jefferson's terms are absent from the wording of the First Ammendment.

Madison felt that a devout religious spirit could as well prevail in the militia without the presence of Chaplains. A devout officer could be of as much worth to religion as the service of an ordinary Chaplain.²

There exists a series of Supreme Court decisions with wording and mood which militate obliquely against Chaplains in the militia. But, again, these opinions postdate the Constitution and, in the opinion of this writer, do not harmonize with the intent of the First Ammendment.

To a decision, the Justices lean heavily upon Jefferson's "wall of separation." It has been pointed out that this view is absent from both the wording and intent of the First Ammendment. This was Jefferson's view. So, Justice Black says the wall may not be breached; Justice Frankfurter admonishes that a wall is not a fine line easily overstepped; Justice Jackson fears that the wall may become as winding as Jefferson's famous serpentine wall at the University of Virginia and later declares that it has become even more twisted and warped³ than he expected; Justice Reed, in a lucid moment, concluded that a rule of law should not be drawn from a figure of speech.

2. Madison, Monopolies, Perpetuities, Corporations, Ecclesiastical Endowments, Harpers Magazine, 494, 1914.

3. Joseph Tussman, op. cit., XV.

Justice Black in the Everson Case stated that no laws may be passed which aid one religion, aid all religions, or prefer one religion over another.⁴ These words of Justices Rutledge, Frankfurter, Jackson, and Burton in the dissenting opinion in Emerson v Board of Education (1947) amplify this interpretation of the establishment clause:

Not simply an established church, but any law respecting an establishment of religion is forbidden. The Amendment's purpose was not to strike merely at the official establishment of a single sect, creed or religion, outlawing only a formal relation such as had prevailed in England and some of the colonies. Necessarily it was to uproot all such relationships. It was to create a complete and permanent separation of the spheres of religious activity and civil authority by comprehensively forbidding every form of public aid or aid for religion. The prohibition broadly forbids state support, financial or other, of religion in any guise, for or degree. It outlaws all use of public funds for religious purposes.⁵

One is invited to pause and reflect that this comprehensive reading of a secularistic meaning into the First Amendment occurred in the 20th Century. So that one learns more about the era in which such an opinion was formed than about the Amendment it allegedly explicates. If such a yawning and profound chasm between civil and religious matters was intended by the colonials, it is reasonable to suppose that those able visionaries would have so written their documents. Of what significance is the fact that no essay exists which presents

4. Ibid, XV.

5. Ibid, pp. 213-220.

that sort of mood and intent ably and skillfully? No speech or memo unfolding this sort of thinking can be found. This is true because these colonists did not seek release from religion per se. On this cardinal point turns the whole history of discussion and controversy.

Obviously, then, to apply the import of these later opinions to the legal question of Chaplains in service, one may conclude that a violation exists of the Constitution. The conclusion of this paper is that this attitude rests upon an inaccurate understanding of the intent, mood and spirit of the First Amendment, and that it grows out of a secularistic, humanistic, and rationalistic mid-twentieth century culture.

One final decision of the Supreme Court provides us with a moderate view of the subject under discussion. It represents, in the opinion of this writer, a stance which is consonant with the heart of that First Amendment. Justice Reed in the *McCollum v Board of Education* (1948) noted:

The Congress of the U. S. has a chaplain for each House...The armed forces have commissioned chaplains from early days...veterans receive training at government expense for the ministry in denominational schools...In the U. S. Naval Academy and the U. S. Military Academy, schools wholly supported and controlled by the federal government, there are a number of religious activities, Chaplains are attached to both schools. The prohibition of enactments respecting the establishment of religion do not bar every friendly gesture between Church and state. 6

6. Joseph Tussman, *op. cit.*, p. 264.

CONCLUSION

U. S. Chaplains participate in a significant history. In meeting the religious needs of men who bear arms for their nation's causes, the Chaplain has been and continues to be a part of what Dr. Cushman of Duke Divinity School once referred to as God's latest attempt to create a nation wherein men may hear and be free to obey the will of God. The Chaplaincy represents what is at the heart of the American tradition-- God and His beneficent will for His creatures.

Its legality turns upon its mission--to serve the needs of soldiers through providing spiritual ministries of every religious persuasion. In accomplishing this mission it in no particular violates the specific intent of those writers and thinkers whose single wish it was to avoid an ecclesiastical structure which could with state backing force its views and ways of worship upon Americans. Part and parcel of their views was the deep conviction that the Almighty God who had brought them to these shores was yet to be a vital part of the nation's total life. One is driven to wonder what might be their reaction to subsequent notions that walls and separations should characterize the relationship between this nation and its spiritual heritage.

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